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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 PHUONG TRAN, 11 vs. 12 QUALITY LOAN SERVICE 13 CORPORATION, a California corporation, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., corporation, OCWEN LOAN SERVICING, LLC, GSAMP Trust 2005-WMC1, a trust, WMC MORTGAGE CORPORATION, a corporation, DEUTSCHE BANK NATIONAL TRUST COMPANY, Does 1 -10 inclusive, 19 Defendants.	10 Plaintiff, 12 14 16 18 20 22 24 26 28	10 CASE NO.: 2:12-cv-01372-GMN-GWF 12 HON: GLORIA M. NAVARRO District Court Case: A-12-665248 14 MEMORANDUM AND AFFIDAVIT OF EDWARD S. COLEMAN
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21 Plaintiff, through counsel, hereby submits her Memorandum to the Court, Including the
22 Affidavit of Edward S. Coleman in relation to the Court's Order to provide previous case
23 information and a copy of the order in U.S. District Court, District of Nevada Case Number
24 **2:11-cv-00910-RCJ-LRL**, as requested by the Judge at the Hearing on September 21, 2012.

25 DATED this 6th day of September, 2012.

26 COLEMAN LAW ASSOCIATES,
27 A Professional Law Corporation

28 /s/Edward S. Coleman
EDWARD S. COLEMAN, ESQ.
NV Bar No. 000601
8275 S. Eastern Avenue, Suite 200
Las Vegas, NV 89123

1 **AFFIDAVIT OF EDWARD S. COLEMAN IN RE ORDER FOR REMAND OF CASE TO**
2 **STATE COURT BASED UPON 28 U.S.C.1441(c): NO FEDERAL QUESTION**

3 STATE OF NEVADA) ss.
4 COUNTY OF CLARK)

5 EDWARD S. COLEMAN, being first duly sworn deposes and says:

6 1. I am an attorney licensed to practice law in all of the courts in the States of Nevada and
7 California, the United States District Court for the District of Nevada, the Ninth Circuit Court of
Appeals, the United States Tax Court and the United States Supreme Court.

8 2. I am a senior member of Coleman Law Associates, a Professional Law Corporation
9 (herein "CLA"), whose office is located at 8275 S. Eastern Avenue, Suite 200, Las Vegas, Nevada
10 89123 (formerly 6615 S. Eastern Ave., Suite 108, Las Vegas, Nevada 89119) and which law firm has
11 and does now represent Plaintiff Phuong Tran in Case No. 2:12-cv-01372-GMN-GWF before the United
12 States District Court for the District of Nevada; the case was the subject of a Notice of Removal from
13 the Clark County District Court, State of Nevada, Case No. A-12-665248.

14 3. I have personal knowledge of, and am competent to testify to, the facts herein set forth
15 except for those matters stated and upon information and belief, and as to those matters, I believe them
16 to be true. At all times pertinent to the facts herein stated, either I, or an associate attorney or paralegal
17 employed by my law firm participated in the drafting of documents and maintaining records comprising
18 parts of my law firm's files and/or occurrences hereinafter set forth.

19 4. I make this Affidavit pursuant to Order of the Court to provide information as to the
20 ruling of Chief United States District Judge Robert C. Jones in a similar case in which he ordered
21 remand of a case similar to the current case. That case was entitled "Christopher Tran v. Julius Bacardi,
22 Bank of America, et al," bearing Case No. 2:11-cv-00910-RCJ-LRL in the United States District Court
23 for the District of Nevada; that case was originated as Case No. A-09-588948-C in the Clark County
24 District Court, State of Nevada and was also subject to a Notice of Removal. Christopher Tran is not
25 nor has he ever been related to Phuong Tran. The referenced case is herein referred to as "the prior case."

26 5. In the prior case, similar to the instant case, a law suit was filed in the state district court to
27 determine the rights and obligations of the parties due to an alleged defect in the mortgage (trust deed)

1 foreclosure proceeding instituted by the Bank of America under the Nevada foreclosure statute (NRS
2 107.086) as well as other consumer oriented statutes. All of the claims of the plaintiff were premised
3 upon Nevada state law although the fifth cause of action, based upon deceptive trade practices, was
4 generally related to mail fraud, wire fraud and bank fraud. That cause of action and others were
5 dismissed due to motions made by the Bank of America in the state court. U. S. Bank, a defendant was
6 served with process but defaulted, although that bank became active when a removal petition was filed in
7 the U.S. District Court.

8 6. Similar to the instant case, after Bank of America filed a Petition for Removal to the
9 federal court on June 3, 2011. It also made a motion to dismiss and a motion for summary judgment as it
10 did in the instant case after plaintiff filed his motion for remand to the state court.

11 7. The Bank opposed the Motion to Remand which alleged, among other things, that there
12 was no ground for remand in that there was a federal question giving the U. S. District Court jurisdiction
13 under 28 U.S.C. 1441(a)(b) and (c). A notation of that claim is contained in Plaintiff's Reply to
14 Opposition to Motion To Remand, marked **Exhibit "1"** and attached hereto and incorporated herein by
15 reference.

16 8. Plaintiff also attaches hereto and incorporates herein by reference **Exhibit "2"** which is
17 the Opposition to Defendant Bank of America's Motion for Summary Judgment for the purpose of
18 indicating that Judge Jones had set a hearing on the Motion To Remand for October 21, 2011.

19 9. Affiant personally appeared at the scheduled hearing on the various motions, including the
20 Motion To Remand, and argued the case before Judge Jones as did opposing counsel. Judge Jones orally
21 announced his decision from the bench. He drafted and signed a written order in conformity therewith.

22 10. On November 4, 2011, Judge Jones issued his Order, a copy of which is attached hereto,
23 marked **Exhibit "3"** and incorporated herein by reference. Reference is made to Judge Jones' discussion
24 on Page 3, lines 13 et seq. as well as his order on Page 4, Lines 8 and 9 in which he states, "**Additionally,**
25 **the Court grants Plaintiff's Motion to Remand (#6) because the complaint clearly raises all state**
26 **law claims.**" He also treats the fifth cause of action relating to deceptive trade practices as a state law
27 claim.

28 11. Judge Jones' judicial analysis was premised upon 28 U.S.C. 1441(c) as enacted by

1 Congress in Public Law 112-63 also known as the "Federal Courts Jurisdiction and Venue Clarification
2 Act of 2011. A copy of that Public Law is marked **Exhibit "4"** attached hereto and incorporated herein
3 by reference.

4 12. To provide even further support for the mandate of Congress to remand this case to the
5 state court, Affiant also attaches the following:

6 a. Internet article by ReedSmith, dated January 20, 2012, specifying that Congress had
7 stripped the federal courts of jurisdiction over unrelated state law claims marked and
8 attached hereto as **Exhibit "5"**; and
9 b. Pre-Congressional action by the Fifth Circuit Court of Appeals in *Eastus v. Blue Bell*
10 *Creameries*, 97 F.3d 100 (5th Cir. 1996) marked and attached hereto as **Exhibit "6"**; and
11 Seventh Circuit Court of Appeals in *Thomas v. Shelton*, 740 F.2d 478 (7th Cir. 1984)
12 marked and attached hereto as **Exhibit "7"** previously cited by Affiant in its remand
13 papers.

14 13. I believe I have cited as succinctly as possible the case and surrounding circumstances in
15 regard to Judge Jones' decision and order

16 .
17 Dated: September 24, 2012.

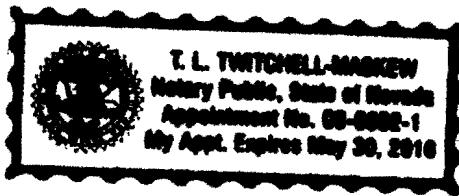


EDWARD S. COLEMAN

19 Subscribed to before me, a Notary Public
20 in and for the County of Clark, State of
21 Nevada.
22 September 24, 2012.



Tammy Twitchell-Maskew



1
2 **CERTIFICATE OF MAILING**
3

4 I hereby certify that I am over the age of eighteen (18), that I am not a party to this
5 action, and that on this date I caused to be served a true and exact copy of the following
6 documents:

7 **MEMORANDUM AND AFFIDAVIT OF EDWARD S. COLEMAN**
8

9 By: U.S. Mail
10 Facsimile Transmission
11 Overnight Mail
12 Hand and/or Personal Delivery
13 CM/ECF

14 and addressed to the following:
15

16 Jeffrey S. Allison
17 Charles Tony Piccuta
HOUSER & ALLISON
18 9970 Research Drive
19 Irvine, CA 92618
Fax: 949.679.1112
20 AND
21 Stephanie Cooper-Herdman
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22 5275 S. Durango Drive
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24 *Attorneys for Defendants*
25 *Deutsche Bank National Trust Company, MERS, Ocwen*

26 Christopher M Hunter
McCarthy & Holthus
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28 Las Vegas, NV 89117
Fax: (866) 339-5691
29 *Attorneys for Defendant Quality Loan Service*

30 DATED this 24th day of September, 2012.

31 */s/Tammy Maskew*
32 An Employee of **COLEMAN LAW ASSOCIATES**